

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3164 OF 2007**

Subhash Krishnaji Palkar ..Petitioner.
Vs.
Solapur Dist. Primary Edu. Soc. & Ors. ..Respondents.
Mr.Sarang S. Aradhye C/o. Rajshekar V., advs. for the
Petitioner.

**CORAM : J.H.BHATIA, J.
DATE : JULY 20, 2007.**

P.C.:

1. Heard Mr.Aradhye the learned counsel for the petitioner.

2. To state in brief, the petitioner was appointed as a peon with the respondents in 1972. His services were terminated by an order dated 11th June, 1977. In the Court of C.J.J.D.Pandharpur, the suit was decreed on 11th October, 1984 whereby the respondents were directed to reinstate the petitioner to his duty with continuity of service and full backwages. That decree was challenged by the respondents in Regular Civil Appeal No.67 of 1985. The appeal was partly allowed by the Appellate Court by the judgment dated 13th February, 1990. While the decree for reinstatement of the petitioner with continuity of service was maintained, the appellate Court modified the direction

about payment of backwages and the respondents were directed to pay backwages at the rate of 50%, instead of full backwages. Thereafter, the respondents preferred Second Appeal before this Court. However, it appears that certain office objections were not removed and on 25-6-1992, this Court granted two weeks time to the appellants/respondents to remove the office objections and on failure to comply with the said order, the Second Appeal was to stand automatically dismissed without any further order. Office note dated 4-2-1994 reveals that the office objections were not removed, and, therefore, by virtue of the order dated 25-6-1992, the said appeal stood dismissed. If the order dated 25-6-1992 and the office note dated 4-2-1994 are read together, it would appear that on failure to remove office objections within two weeks from 25-6-1992, the Second Appeal would stand dismissed automatically. It means the appeal would be deemed to have been dismissed on 10th July, 1992, though the office note to that effect was taken on 4-2-1994.

3. The petitioner was reinstated in service however, he was not paid backwages as per the decree passed by the First Appellate Court. Therefore, he filed Execution Petition No.34 of 2002 on 22nd July, 2002. On behalf of the respondents objection to the execution petition was taken contending that the decree

was barred by the limitation. After hearing the parties, the learned executing Court noted that the first part of the decree for reinstatement of the petitioner was already complied and the second part of the decree was for payment of 50% of wages and to that extent it was money decree. Decree passed by the trial Court was merged in the decree passed by the First Appellate Court on 13-2-1990. By virtue of Article 136 of the Limitation Act, period of limitation for execution of money decree would be 12 years therefore, decree could be executed by filing Execution Petition on or before 13-2-2002. As the petitioner had filed the execution petition on 22-7-2002, it was found to be barred by the limitation and was rejected.

4. The petitioner has challenged the said order in the present petition. According to him, Second Appeal was dismissed in the year 1994 and therefore, period of limitation would begin to run only from the date of dismissal of the second appeal. I have already noted the relevant dates about Second Appeal. It appears that no stay was granted in the second appeal. Infact in view of the office objections being not removed, the appeal was dismissed without even being admitted. In such circumstances, it can not be said that this Court had passed a decree in Second Appeal. The learned trial Court was right in holding that period of

limitation, as far as payment of backwages is concerned, would begin to run from the date when the first appellate Court passed the decree, i.e., 13-2-1990 and in view of Article 136 of the Limitation Act, application for execution of the same could have been filed within twelve years. I find no fault in the impugned order.

5. In the result, petition stands dismissed summarily.

6. At this stage, the learned counsel for the petitioner makes a statement that the respondents have again dismissed the petitioner from service and he has challenged that order before the School Tribunal. Any observations made in the present order or any observations made by the executing Court are restricted to the execution of the decree for payment of backwages particularly because the decree for reinstatement was already implemented. Therefore, observations will not come in a way of the petitioner in the proceeding before the School Tribunal.

[J.H.BHATIA, J.]